

STATE OF NEW HAMPSHIRE  
WATER COUNCIL

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Docket No. 03-10-WC

JUL 18 2005

Appeal of the Conservation Law Foundation  
In Re: Water Quality Certificate No. 2003-001

**MOTION FOR CONTINUANCE OF HEARING**

NOW COMES the Conservation Law Foundation (CLF) and respectfully submits the following motion in the above-captioned appeal:

1. This appeal challenges a Section 401 Water Quality Certificate issued by the Department of Environmental Services (Department) for a proposed 79-lot residential subdivision in and among valuable wetlands and surface waters in Greenland. The final evidentiary hearing on this appeal is currently scheduled for August 10, 2005.

2. CLF respectfully requests a continuance of the hearing to another date on the following grounds.

3. First, at the prehearing conference, it was agreed that the parties would submit briefs addressing a discrete legal question raised in this appeal: whether the Department had authority to issue the challenged 401 certificate in light of the expiration of its 401 rules. It was contemplated that the Council would address this legal issue at its July meeting to determine the necessity of an evidentiary hearing on other matters in this appeal. The parties agreed at the prehearing conference that this approach would be in the interest of judicial economy. It is CLF's understanding that the Council did not meet in July. CLF is concerned that the Council will not, as contemplated at the prehearing conference, render a decision on the legal question briefed by the parties, which could result in the parties preparing for a hearing that – depending on the Council's disposition of that issue – could be rendered unnecessary.

4. Second, as set forth in a Motion to Compel filed on this date, the Department has taken the position that it need not respond to certain discovery requests made by CLF. The discovery requested by CLF is necessary for CLF's preparation for the Council's evidentiary hearing. CLF is greatly concerned that this discovery dispute may not be resolved in time for CLF to adequately prepare for the August 10 hearing.

5. Third, at the prehearing conference, the parties discussed the possibility of simplifying the factual issues to provide for a more economical hearing. Regrettably, the parties have not succeeded in doing so.<sup>1</sup> This, combined with the extensive witness and exhibit lists submitted by the applicant and CLF,<sup>2</sup> indicates that the hearing of this matter

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<sup>1</sup> CLF prepared a number of factual statements for stipulation by the Department. The Department has declined to stipulate to them.

<sup>2</sup> CLF has not yet seen the Department's witness and exhibit lists.

could be rather lengthy, likely requiring a full day. It is CLF's understanding that another appeal is currently pending for August 10, meaning the Council may not have adequate time on August 10 to complete this hearing.

6. Finally, CLF has learned that one of its witnesses, David Burdick of the UNH Jackson Estuarine Laboratory, will be unavailable on August 10 because of a long-standing week-long teaching engagement in Steubin, Maine. The course has been scheduled since January. Professor Burdick's responsibility for leading activities and giving lectures from 9 AM until 5 PM (and some evenings), coupled with the 6 hour driving time between Steubin, Maine and Concord, make him unavailable for the August 10 hearing.

WHEREFORE, CLF respectfully requests that the Council re-schedule the final hearing of this appeal to another date.

Respectfully submitted,

Conservation Law Foundation

**COPY**  
By 

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Date: July 18, 2005

CERTIFICATE OF SERVICE

A copy of this pleading has this day been forwarded via U.S. Mail to Jennifer J. Patterson, Esq., and Malcolm R. McNeill, Jr., Esq.

 **COPY**  
Thomas F. Irwin